IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11844 of 2002
with
SPECIAL CIVIL APPLICATION NOS 1128, 9697/02, 8516/03
AND 11526 of 2002
with
CIVIL APPLICATION NOS 1394/03 and 2969/03
IN
SPECIAL CIVIL APPLICATION No 1128 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANLAL AGGARWAL

Versus

UNITED INDIA INSURANCE COMPANY LTD.

Appearance:

1. Special Civil Application No. 11844 of 2002
MR NAVIN K PAHWA for Petitioner No. 1
MR RAJNI H MEHTA for Respondent No. 1-2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 08/08/2003

ORAL JUDGEMENT

In all these petitions, more or less, common questions are involved pertaining to Mediclaim Policy and, therefore, they are being dealt with together by the present common judgment and order.

2. The short facts of the case appear to be that the petitioners in all these petitions are persons who were formerly granted Mediclaim Insurance Policies by the respective concerned Insurance Companies. That the respondent-Insurance Companies are subsidiary of General Insurance Corporation of India and there is deep and pervasive control of the Government and they are instrumentality of the State within the meaning of Article 12 of the Constitution of India.

3. So far as the petitioner of SCA No.11844/02 is concerned, in the year 1992, he got insured for mediclaim for Rs.40,000/- which as per his say was the maximum coverage permissible at the relevant point of time. Subsequently, the said maximum limit of coverage was raised to Rs.3,00,000/- in the year 1993-94, and the petitioner, accordingly, revised the amount of policy, by paying requisite premium. The petitioner, since then, continued to have the insurance of mediclaim by paying premium regularly and even the respondent-company also continued to renew the policy. The last policy, as per the petitioner, was renewed on October 4, 2001 which was valid upto October 3, 2002 vide Policy No.181600/48/01/02711 for a sum of Rs.3,00,000/-. The petitioner requested for renewal of the policy vide his letter, dated 9.9.02 and forwarded an amount of Rs.6,327/-. However, the petitioner did not get the renewal intimation of the policy and, therefore, the petitioner sent reminder, and thereafter also sent notice, dated 29.2.2002 through his advocate. On September 30, 2002 the Insurance Company addressed a letter to the petitioner informing that due to high claim experience the policy will be renewed by 300% premium and the petitioner was requested to send revised premium and the amount of Rs.18,982/- was also paid by the petitioner by cheque and the receipt, dated 1.10.2002 vide receipt No.54536 was also issued by the respondent-Insurance Co and the respondent Insurance Co accepted the aforesaid premium. However, on October 3, 2002 the Insurance Co issued a letter to the petitioner informing that the policy can be renewed only subject to exclusion of five diseases, namely (i) Hyper Tension, (ii) Diabetes

Mellitus, (iii) Ischemic Heart Disease, (iv) Nephropathy Hypothyroidism and (v) Chronic Renal Failure. The petitioner is aged 65 years and it is the case of the petitioner that of late he has become the patient of chronic renal failure and is required to get dialysis four times in a month and is required to take several medicines and also medical supervision and therefore he is in need of coverage of mediclaim policy and if the diseases as mentioned above are excluded it would frustrate the mediclaim insurance, and therefore, the present petition.

4. The petitioner of SCA No.1128/02 was granted mediclaim policy, for the first time, from 1.1.1997 to 30.7.98 for covering risk upto Rs.55,000/- and thereafter the same was renewed for the year 1998-99. However, for the period 1999-2000 the amount of coverage was increased to Rs.2,50,000/- for mediclaim and for Rs.40,000/- for domestic hospitalisation. It is also the case of the petitioner that in the meanwhile the petitioner had to undergo major operation of Coronary Artery Bypass Grafting (popularly known as Bypass Surgery) and was hospitalised from 17.4.1999 to 26.4.1999 and petitioner had put up the claim of Rs.1,55,845/- with the Insurance Company which is not accepted and the dispute was pending before the Consumer Forum being Application No.22/00, but pending the said dispute, the policy was renewed by the respondent-Insurance Co for the period from 25.1.2000 to January 24, 2001. The Consumer Forum directed the respondent-Co to make payment of the claim of Rs.1,51,845.30ps with interest at the rate of 10% p.a. from 12.8.99 till actual payment and also costs of Rs.1250/-. The petitioner sent cheque for Rs.4657/- for renewal of the policy for the period after January, 2002 but the respondents communicated vide letter, dated 16.1.2002 to the petitioner that the insurance company is not interested to renew the policy and therefore the cheque is returned. The petitioner also stated that prior to the aforesaid communication on November 24, 2000 the petitioner had undergone the operation for replacement of knee-joint and the claim was submitted for such operation which came to be rejected by the Insurance Co as per the communication dated 26.7.01 intimating that the petitioner was suffering from severe Arthritis and the said material facts regarding pre-existing disease was not disclosed and therefore the claim is rejected. The petitioner under these circumstances has approached this court challenging the action of the Insurance Co of refusing to renew the mediclaim policy as per the communication dated January 16,2002.

5. The petitioner of SCA No.8516/03 had the mediclaim policy since six last six years prior to the year 2001 and the policy was lastly renewed from 15.12.2001 to 14.12.2002. The petitioner underwent heart surgery and putforward the claim of Rs.60,000/- and Rs.2,78,990.50ps which was accepted by the Insurance Company but when the petitioner had forwarded the cheque for renewal of policy the respondent No.2 communicated vide letter dated 2.12.2002 intimating that looking to the adverse claim ratio of the petitioner the policy is not going to be renewed and therefore the present petition.

6. The petitioner of SCA No.9697/02 is having medical claim policy since 1990. On 18.3.02 the petitioner paid the premium for renewal of the policy for the subsequent period from 26.2.2002 to 25.3.2003. However, on 25.2.2002 the petitioner submitted the claim under the policy for Lateral Wall Myocardial Infraction and for the treatment for the same which was accepted by the respondent-Insurance Co by paying the claim of Rs.3,85,750/-. However, on 28.7.02 the petitioner was simultaneously communicated that as per Condition No.59 of the policy, the present policy shall stand cancelled after 30 days from the date of receipt of the letter and the prorata refund for unexpired period was also be made. The petitioner replied vide letter, dated 4.9.02 calling upon the respondent to intimate the reasons for cancellation of the policy but the Insurance Co as per letter dated 30.9.02 only refunded the premium on prorata basis and therefore the present petition.

7. The petitioner of SCA No.11526/02 had the mediclaim policy for the period upto 20.4.02 and on 19.4.02 the petitioner applied for renewal of the policy by forwarding cheque for an amount of Rs.2482/- but the respondent-company declined to renew the policy on the ground of adverse claim experience and therefore the premium is returned by the respondent-Company. The petitioner entered into correspondence and ultimately the respondent-Company declined the request for renewal of the policy, and hence, this petition.

8. The learned counsel appearing for the petitioners have adopted the submissions made by Mr.Pahwa appearing in SCA No.11844/02 and the learned counsel for the respondent-Insurance Companies have adopted the submissions made by Mr.P.V.Nanavaty and Mr.R.H.Mehta.

9. The learned counsel for the petitioners have

challenged the action of the concerned respondent-Insurance Co on the ground that the same is arbitrary and violative of Article 14 of the Constitution of India and have mainly relied upon the judgment of the Apex Court in the case of Biman Krishna Bose vs United India Insurance Co.Ltd & Anr reported in (2001) 6 SCC 477 and it was submitted that such a view was taken by the Apex Court in the case of mediclaim only and therefore as per their submissions the issue is covered by the judgment of the Apex Court in the case of Biman Krishna Bose(supra).

10. The learned counsel appearing for the respondent-Insurance Companies raised various contentions mainly that now the mediclaim insurance business is not monopoly business of the insurance companies which are subsidiary of General Insurance Corporation and there are other private insurance companies providing mediclaim facilities and therefore it was submitted that the judgment or the view of the Apex Court in case of Biman Krishna Bose (supra) should not be made applicable in view of the change in circumstances. It was also submitted that as such no insurance company can be compelled to accept the insurance and the matter is in the realm of contractual relations between the parties. Now the respondent-Companies are doing business at par with other insurance companies which are private companies in the field of mediclaim and therefore if the writ can not be issued against those private companies then writ can not be issued against the respondents only because it is a "State" within the meaning of Article 12 of the Constitution of India. It was submitted that nobody can, as a matter of right, assert that the mediclaim insurance should be continued for all times to come and it was also submitted that as such the insurance would be of the matter where the risk is unknown to the party, but in a case where a person is suffering from any disease and if the expenses for treatment is to be assured, it would be annuity insurance and not the mediclaim. It was also submitted that as such after the change in the policy and amendment in the General Insurance Business (Nationalisation) Act since it is not a monopoly business or activities of the respondents, it can not be said that there is no option left to the petitioners of getting the mediclaim insurance by entering into an agreement with the private companies. The Ld.counsel appearing for the insurance companies also submitted that in view of the formation of Insurance Regulatory Authority and framing of the Redressal of Public Grievances Rules, 1998 (hereinafter referred to as 'the Rules') the petitioners can approach the Ombudsman

and therefore the present petition is not maintainable under Article 226 of the Constitution of India even otherwise also and therefore deserve to be dismissed. Mr.Nanavaty and Mr.Mehta have relied upon the judgment of the Apex Court in the case of General Assurance Society Ltd vs Chandumull Jain reported in AIR 1966 SC 1644 for contending that if the condition of policy provide for cancellation of insurance, the said condition is not unreasonable and the policy of insurance can be terminated and it was also submitted that now since there is no monopoly business with the respondent-insurance companies the position as prevailing prior to nationalisation of insurance companies would prevail and therefore the judgment of the Apex Court in case of Biman Krishna Bose (supra) would not apply but the judgment in the case of General Assurance Society (supra) would apply. The reliance was also placed upon the decision of the Apex Court in the matter of LIC of India vs Consumer Education & Research Centre and others reported in (1995) 5 SCC 482 for contending that the respondent-Insurance Co is empowered to formulate its own policy and to enforce the same and it can not be compelled to accept the insurance.

11. Before I consider the matter on the other aspects, it is necessary to consider the submission of Ld.counsel appearing for the Insurance Companies on the point of maintainability of the petition. The constitution of Insurance Regulatory Authority and the Rules for Redressal of Public Grievances provide for Ombudsman. The powers of Ombudsman are specified in Rule 12. The Ombudsman has power to entertain complaint of a person who has grievance against the insurer. Sub-rule (2) of Rule 13 provides for the details to be given for giving rise to the complaint and the reliefs sought from the Ombudsman. Therefore, the complaint would be in the nature and to extent of loss to the complainant. Other clauses of Rule 12 provide for power of Ombudsman to receive and consider the complaints in respect of any partial or total repudiation of claims by an insurer and disputes in regard to premium paid or payable in terms of the policy and any dispute on the legal construction of the policy in so far as such disputes relate to claims, delay in settlement of claims or non-issue of any insurance document to customers after receipt of premium.

12. In this group of petitions, there is denial to renew the policy by the insurance company except in SCA No.9697/02 where there is cancellation of insurance. It is doubtful that whether the Ombudsman can compel the insurer to renew the policy and to continue with the

insurance. Further, on the question of alternative remedy, it is well settled that existence of alternative remedy would not operate as bar to this court for exercising power under Article 226 of the Constitution of India and it is only by way of self-imposed restriction this court may not entertain the petition in a case where there is alternative remedy available to the petitioner. In the present case, as such, the distinguishing features are that it is doubtful that the reliefs prayed for in this group can be granted by the Ombudsman as per Rules. Further, as per petitioners, the Apex Court has also decided such issue in case of Biman Krishna Bose(supra) and the respondent-Insurance Companies are instrumentality of the State within the meaning of Article 12 of the Constitution of India, and therefore, in view of peculiar facts and circumstances pointed out hereinabove, I am not inclined to reject the petitions on the ground that there is alternative remedy available to the petitioners. Therefore, the contention raised by Mr.Nanavaty and Mr.Mehta on behalf of respondent-Insurance Companies on the question of maintainability of present petitions can not be accepted and hence rejected.

13. The aforesaid takes me to examine the question of scope and ambit of power of this court under Article 226 of the Constitution of India in a contractual matter when it is by or with the authority which can be said "State" within the meaning of Article 12 of the Constitution of India. As such, the said issue now stands covered by the decision of the Apex Court in case of Biman Krishna Bose (Supra) where the Apex Court had an occasion to consider the identical issue when the insurance company had refused to renew the mediclaim policy of the petitioner before the Apex Court. The Apex Court at para 3 had observed as under:

> "Even in the area of contractual relations, the State and its instrumentalities are enjoined with the obligation to act with fairness and in doing so can take into consideration only the relevant materials. They must not take any irrelevant and extraneous consideration while arriving at a decision. Arbitrariness should not appear in their actions or decisions."

The Apex Court further observed at para 5 in respect of mediclaim policy as under:

> "A renewal of insurance policy means repetition of the original policy. When renewed, the policy

> is extended and the renewed policy in identical terms from a different date of its expiration comes into force. In common parlance, by renewal the old policy is revived and it is a part of substitution of obligations under the old policy unless such policy provides otherwise. It may be that on renewal a new contract comes into being, but the said contract is on the same terms and conditions as that of the original policy. Where an insurance company which has exclusive privilege to carry on insurance business has refused to renew the mediclaim policy of an insured on extraneous and irrelevant considerations any disease which an insured had contacted during the period when the policy was not renewed, such disease not be covered under a fresh insurance policy in view of the exclusion clause. The exclusion clause provides that pre-existing diseases would not be covered under a fresh insurance policy. If we take the view that the mediclaim policy can not be renewed with retrospective effect it would give handle to the insurance company to refuse the renewal of the policy on extraneous consideration thereby deprive the claim of the insured for treatment of the diseases which have appeared during the relevant time and further deprive the insured for all time to cover those diseases under an insurance policy by virtue of exclusion clause. This being the disastrous effect of wrongful refusal of renewal of the insurance policy, the mischief and harm done to the insured must be remedied. We are, therefore, of the view that once it is found that the act of an insurance company was arbitrary in refusing to renew the policy, the police is required to be renewed with effect from the date when it fell due for renewal."

The Apex Court, thereafter, directed that if the appellant applies for renewal of his mediclaim policy for the expired period and pays the premium, the respondent-Company shall renew the said mediclaim policy forthwith.

14. Therefore, in view of the aforesaid decision of the Apex Court, it can not be said that in the matter of mediclaim policy this court while exercising power under Article 226 of the Constitution of India though the matter pertains to contractual rights of the parties can not direct the insurance company to renew the mediclaim

policy of the petitioners if it finds that the action of refusal or denial to renew the policy is arbitrary and unfair.

15. At this stage it would be worthwhile to abstract certain observations of the Apex Court at para 29 in the case of LIC of India vs Consumer Education & Research Centre reported in (1995)5 SCC 482:

"The arms of the High Court are not shackled with technical rules or procedure. The actions of State, its instrumentality, any public authority or person whose actins bear insignia of public law element or public character are amenable to judicial review and the validity of such an action would be tested on the anvil of Article 14. While exercising the power under Article 226 the court would be circumspect to adjudicate the disputes arising out of the contract depending on the facts and circumstances in a given case. The distinction between the public law remedy and private law field can not be demarcated with precision. Each case has to be examined on its own facts and circumstances to find out the nature of the activity or the scope and nature of the controversy. The distinction between public law and private law remedy is now narrowed down. The actions of appellants bear public character with an imprint of public interest element in their offers regarding terms and conditions mentioned in the appropriate table inviting the public to enter into contract of life insurance. It is not a pure and simple private law dispute without any insignia of public element. Therefore, we have no hesitation to hold that the writ petition is maintainable to test the validity of the conditions laid down in the table 58 term policy and the party need not be relegated to a civil action."

In view of the aforesaid observations of the Apex Court the contention of the learned counsel appearing for the respondent companies that the insurance company can not be compelled to renew the policy and to continue with the insurance since it falls within the realm of contract can not be accepted, and hence, rejected.

16. The attempt made by the Ld.counsel for the

respondent-companies to dilute the effect of the judgment of the Apex Court in the case of Biman Krishna Bose (supra) is also, in my view, misconceived in as much as the Apex Court has examined the matter and the action of the insurance company of refusing to renew the mediclaim policy on the touch-stone of Article 14 of the Constitution of India and it is true that the Apex Court has considered the question incidentally also that the insurance company is having the monopoly of insurance business but merely because there is reference to monopoly status at the relevant point of time of insurance business, it can not be said that the view of the Apex Court shall not hold the field or such view can not be made applicable to the facts of the present case. The position of law was settled even prior to the aforesaid decision of the Apex Court in the case of LIC of India v/s Consumer Education & Research Centre (supra) that the action of the State or instrumentality of the State in discharge of public function or in public duty should meet with the test of Article 14 of the Constitution of India. Therefore, in my view, the distinction as sought to be canvassed by the learned counsel for the respondent-companies is illfounded. The State and its instrumentalities are duty bound to act in a just, fair and reasonable manner which is a mandate of the Article 14 of the Constitution of India. As such, the contention for cessation of status of monopoly business of mediclaim insurance would be relevant only to the extent where contract of mediclaim policy is to be entered for the first time or renewal is refused in the manner which would not leave the insured in helpless condition as referred to hereinafter. Therefore also such distinction as sought to be canvassed is misconceived and can not be accepted.

17. The contention raised on behalf of the insurance companies that when the risk is known to the insured, it would be annuity insurance deserves consideration. It is true that if the risk is known to the insured at the time when mediclaim insurance is taken, possibly the insurance company can not be compelled to issue such policy for the diseases which is known in the body of the insured but such aspect can not be concluded to the extent that the disease which the insured has met with or suffered after the policy is issued would give handle to the insurance company to act arbitrarily or in unfair manner. Therefore, when the mediclaim policy is issued for the first time it would be open or within the power of the insurance company to decline the insurance if there is any suppression of material fact which is not disclosed by the insured at the time of insurance and subsequently

if it is known to the insurance company the action for cancellation of the policy would stand altogether on a different footing, and possibly, such action may be justified. However, the action of the insurance company of declining to renew the mediclaim policy on the ground that the insured has suffered sickness when the policy was subsisting, in my view, would be wholly unreasonable and arbitrary. Technically, policy may be renewed at the interval of a particular period and the liability to pay the premium may accrue every year. But, denial to renew the policy and thereby to leave the insured in a helpless condition for treatment of disease which has been suffered during the period when the mediclaim policy was subsisting can be said to be exfacie unreasonable on the part of the Insurance Company. In a given case, the insured may be healthy at the time when the policy is taken for the first time, but thereafter he may suffer a disease for the reasons beyond his control and the treatment of such disease may continue for a period exceeding the expiry of the period of insurance, then, in such circumstances, the stand taken by the insurance company to deny the renewal of the policy for such disease can be said to be unjust, unfair and arbitrary. Nothing prevents the insurance company to fully examine the health of the insured at the time when the policy is to be issued for the first time, but once the policy having been issued and if the insured suffers any disease after the policy, the insurance company can not justify its refusal to renew the policy for such disease which is suffered by the insured and for which the treatment to be continued future or for which the claim was made by the insured for the treatment of such disease. The aforesaid does not mean that the Insurance Company must continue to renew the mediclaim policy by covering such sickness which the insured suffered, on the terms and conditions of the same premium etc. Even if such terms and conditions of raising of premium etc are to be modified by the Insurance Company then also it must meet with the test of Article 14 of Constitution of India and such modification should not be unreasonable, arbitrary or capricious or based on irrelevant considerations.

18. Therefore, keeping in view the aforesaid observations and discussion, the case of the respective petitioner will have to be examined.

19. The petitioner of SCA No.11844/02 was granted mediclaim insurance since 10 years back and when he suffered disease of heart in the year 1994 and of TB in the year 2000 and of Kidney failure in September, 2000 the renewal can not done by the respondent-Insurance Co

by excluding the sickness of heart, TB and kidney failure and therefore the action of the insurance company to the extent of excluding the aforesaid diseases is unfair, unjust and unreasonable and violative of Article 14 of the Constitution of India and the respondent-United India Insurance Co is directed to renew the policy of mediclaim of the petitioner with effect from October 4, 2002 after collecting necessary premium including the rise in the premium as decided by the insurance company by not excluding the aforesaid diseases of Heart, TB and Kidney failure. The petition shall stand allowed to the aforesaid extent.

20. The petitioner of SCA No.1128/02 who is having mediclaim policy from July 1, 1997 has suffered heart disease during 1998-99 and the respondent-company has refused to renew the policy after January 25,2002 by only saying that they are not interested to renew the policy. Hence, the respondent-United Insurance Co is directed to renew the mediclaim policy of the petitioner with effect from 25,2002 by not excluding sickness of heart after collecting necessary premium. Petition shall stand allowed to that extent.

21. The petitioner of SCA No.8516/02 was having mediclaim policy since last six years prior to 2001 and the petitioner has suffered sickness of heart during the period 2000-2001 when the policy was in operation and the respondent-Insurance Co, namely, United India Insurance Co.Ltd has canceled the policy immediately after the claim was launched of the aforesaid sickness on the ground of adverse claim ratio and thereafter declined to renew the policy after 15.12.2002. Therefore, the respondent-United India Insurance Co is directed to renew the mediclaim policy of the petitioner after collecting necessary premium by not excluding the the sickness of heart from such policy. Petition stands allowed to that extent.

22. The petitioner of the SCA No.9697/02 had the mediclaim policy since 1990 and he suffered sickness of heart in the year 2001 during the period when the policy was in operation. Such policy was in operation upto 25.3.03, but since the claim was lodged for treatment of heart, the respondent-Oriental Insurance Co cancelled the policy after settlement of the claim with effect from 27.9.02 by returning the proportionate premium and it is the case of the petitioner that thereafter the policy is not renewed and therefore the decision for cancellation of the policy is held as illegal and in violation of Article 14 of the Constitution of India and the

respondent-Oriental Insurance Co is directed to continue the mediclaim policy after collecting all necessary premium by not excluding the sickness of heart. The petition shall stand disposed of accordingly.

23. The petitioner of SCA 11526/02 was issued Medical Claim policy on 21.4.01 which was valid upto April, 2002 and applied for renewal, but the respondent National Insurance Co declined to renew the policy on the ground of adverse claim experience though of course the petitioner did not lodge any claim. It has come on record that the petitioner is suffering from any disease during the said period and therefore it can not be said that the action of refusing to renew the policy is on account of suffering from disease during the period when the policy was in operation. There are other companies dealing in medical claim insurance. Therefore, it can not be said that the petitioner has no choice at all or there are any compelling circumstances for getting the insurance from the respondent only or that the petitioner is left to helpless condition. Therefore no relief can be granted to the petitioner for directing the respondent Insurance Company to renew the policy because by non-renewal of the same it can not be said that the petitioner would suffer any injury or any irreversible situation would be created and therefore the said petition shall stand dismissed accordingly.

24. The rule if already is issued in any petition, it shall stand made absolute to the aforesaid extent only and the other petitions shall stand disposed of accordingly. Considering the facts and circumstances of the case, there shall be no order as to costs.

25. In view of the judgment and order in main SCA Nos 1128 and 11844/02 there shall no order in CA Nos.1394/03 and 2969/03 and they stand disposed of accordingly.

DS permitted.

8.8.03 (JAYANT PATEL,J)

FURTHER ORDER:

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After the pronouncement of judgement, Mr.Saujani

for Mr.Rajni Mehta requests that the operation of the judgement may be stayed for some time so as to enable him to approach before the higher forum. Considering the facts and circumstances of the case, I am not inclined to accept the request and hence rejected.

8-8-2003 (Jayant Patel, J.)